

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DANIEL D. WARWICK,

Plaintiff,

vs.

**3:23-CV-811
(MAD/ML)**

**SCOTT SCHULTZ, REINA MARTIN, and
STEVE BAYNE,**

Defendants.

APPEARANCES:

OF COUNSEL:

DANIEL D. WARWICK

1230 Sexton Hollow Road

Painted Post, New York 14870

Plaintiff, *pro se*

Mae A. D'Agostino, U.S. District Judge:

ORDER

On June 20, 2023, Plaintiff Daniel D. Warwick commenced this action, *pro se*, in the United States District Court for the Southern District of New York against Defendants Scott Schultz, Reina Martin, and Steven Bayne as "eCornell creative department managers." Dkt. No. 1 at 1. Plaintiff alleges that he was terminated from his employment and retaliated against because of his age and disability. *See id.* at 4-5. Plaintiff also submitted an application to proceed *in forma pauperis* ("IFP"). *See* Dkt. No. 2. The case was transferred to this Court on July 6, 2023. *See* Dkt. No. 5.

On September 20, 2023, Magistrate Judge Miroslav Lovric issued a Decision and Order denying Plaintiff's request to proceed IFP. *See* Dkt. No. 6. Plaintiff was given thirty dates to pay

the Court's \$402.00 filing fee.¹ *See id.* Plaintiff filed a letter on November 15, 2023, seeking an extension of time to pay the filing fee because of ongoing administrative proceedings. *See* Dkt. No. 8. Magistrate Judge Lovric granted Plaintiff's request and extended the deadline until January 5, 2024. *See* Dkt. No. 9. Plaintiff did not submit the filing fee. The Court then *sua sponte* extended Plaintiff's time to pay the filing fee until March 15, 2024. *See* Dkt. No. 11. On June 14, 2024, Magistrate Judge Lovric issued a Report and Recommendation recommending that Plaintiff's complaint be dismissed without prejudice for failure to pay the required filing fee. *See* Dkt. No. 12. Magistrate Judge Lovric also noted that Plaintiff has not corresponded with the Court in approximately seven months, which would allow the Court to dismiss Plaintiff's complaint for failure to prosecute. *See id.* at 3, n.2.

Plaintiff did not file any objections to the Report and Recommendation. When a party declines to file objections, the district court reviews the Report and Recommendation for clear error. *See Hamilton v. Colvin*, 8 F. Supp. 3d 232, 236 (N.D.N.Y. 2013). After the appropriate review, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

Having reviewed Magistrate Judge Lovric's Report and Recommendation, Plaintiff's complaint, and the applicable law, the Court does not discern any clear error in the recommendation. Magistrate Judge Lovric correctly explained that pursuant to 28 U.S.C. § 1915(a)(1), a plaintiff may proceed in an action without paying the Court's filing fee if the plaintiff demonstrates sufficient economic need. *See* Dkt. No. 12 at 3; *see also Kaloni Goodley v. Martin et al.*, No. 3:24-CV-00948, 2024 WL 3279035, *1 (D. Conn. June 11, 2024) ("[C]ourts

¹ The filing fee in this Court is currently \$405.00. However, the filing fee was \$402.00 at the time Plaintiff commenced the action.

often grant motions to proceed IFP where the plaintiff demonstrates that he cannot simultaneously afford to pay for his basic needs and the litigation fees"). Where a plaintiff has failed to demonstrate sufficient economic need and fails to pay the Court's filing fee, a complaint may be dismissed. *See Foland v. New York*, No. 1:22-CV-1158, 2023 WL 3079607, *1 (N.D.N.Y. Mar. 15, 2023); *McWilliams v. Sandy*, No. 5:23-CV-0728, 2023 WL 9187389, *1 (N.D.N.Y. Dec. 15, 2023).

Plaintiff stated in his IFP application that he has \$12,000 in savings, checking, or cash, and approximately \$375,000 in real estate. *See* Dkt. No. 2 at 2. Because he did not demonstrate sufficient financial need, Plaintiff was given approximately six months to pay the Court's \$402.00 filing fee. Plaintiff failed to do so. As such, the Court finds no clear error in Magistrate Judge Lovric's recommendation to dismiss Plaintiff's complaint for failure to pay the filing fee.

Accordingly, the Court hereby

ORDERS that Magistrate Judge Lovric's Report and Recommendation (Dkt. No. 12) is **ADOPTED** in its entirety for the reasons set forth herein; and the Court further

ORDERS that Plaintiff's complaint (Dkt. No. 1) is **DISMISSED without prejudice**;² and the Court further

ORDERS that the Clerk of the Court shall enter judgment in Defendants' favor and close this case; and the Court further

² As the Court has concluded that dismissal is warranted for failing to pay the Court's filing fee or demonstrate sufficient economic need to proceed IFP, the Court declines to address Magistrate Judge Lovric's alternative ground for dismissal—failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 41.2(a).

ORDERS that the Clerk of the Court serve a copy of this Order upon Plaintiff in accordance with Local Rules.

IT IS SO ORDERED.

Dated: July 11, 2024
Albany, New York



Mae A. D'Agostino
U.S. District Judge